



COMMONWEALTH OF KENTUCKY
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Subject: Whether Craft Academy and Gatton Academy are required to comply with the Individuals with Disabilities Education Act and implement a free and appropriate public education for its students with disabilities.

Requested by: Kentucky State Senator Julie Raque Adams, District 36

Written by: Taylor Payne, Assistant Attorney General

Syllabus: Gatton Academy and Craft Academy must comply with the Individuals with Disabilities Education Act.

Statutes construed: 20 U.S.C. § 1400; 20 U.S.C. § 1412; 34 CFR § 300.101(b)(1)(ii); 34 CFR § 300.2(b)(1); 34 CFR § 300.36; 707 KAR 1:002; 707 KAR 1:290; KRS 164.7874; KRS 164.002

Opinion of the Attorney General

Kentucky State Senator Julie Raque Adams, Senate District 36, has requested an opinion of this office to address whether Craft Academy (Craft) and Gatton Academy (Gatton) are required to comply with the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400-1482. This office requested and received input on this issue from the Kentucky Department of Education (KDE). This office also received input from JackBeNimble, a nonprofit organization representing students, educators and families of children with disabilities that will be impacted by charter school regulations. Upon consideration of this input, we advise that Gatton and Craft are required to comply with IDEA.

IDEA seeks to ensure that all children with disabilities have available to them a free and appropriate public education (FAPE) tailored to meet their unique needs and prepare them for the future. 20 U.S.C. § 1400 (d)(1)(A). To accomplish this goal, IDEA provides states with federal funding if the state submits a plan to the Secretary of the United States Department of Education that provides assurances that it has policies and procedures to guarantee, among other things, that a free and appropriate education (FAPE) is available to all children with disabilities residing in the state between the ages of three (3) and twenty-one (21). 20 U.S.C. § 1412(a)(1). A FAPE requires that an individualized education program or an individualized family service plan be in effect for each child with a disability. 34 CFR § 300.101(b)(1)(ii).

The provisions of IDEA apply "to all political subdivisions of the State that are involved in the education of children with disabilities[.]" 34 CFR § 300.2(b)(1). This includes:

- (i) The state educational agency (SEA).
- (ii) [l]ocal education agencies (LEAs), educational service agencies (ESAs), and public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA.
- (iii) Other state agencies and schools (such as Departments of Mental Health and Welfare and State schools for children with deafness or children with blindness).
- (iv) State and local juvenile and adult correctional facilities[.]

Id. An LEA is defined as "a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools" A secondary school is further defined as a school "that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12." 34 CFR § 300.36.

Kentucky assigns LEAs with the responsibility to implement the provisions of IDEA. 707 KAR 1:290, Section 1(1). Kentucky similarly defines an LEA as

"a public local board of education or other legally constituted public authority that has either administrative control or direction of public elementary or secondary schools in a school district or other political subdivision of the Commonwealth." 707 KAR 1:002, Section 1(36). Kentucky defines a secondary school as "a school consisting of grades seven (7) through twelve (12), or any appropriate combination of grades within this range" KRS 157.320.

Gatton and Craft are schools for Kentucky students in grades eleven (11) and twelve (12). See www.wku.edu/academy/about/index.php, www.moreheadstate.edu/Academics/Craft-Academy (each last visited on September 11, 2017). The Kentucky General Assembly defines Craft and Gatton as high schools. KRS 164.7874(11). Their students are considered high school students, rather than postsecondary students. See KRS 164.7874(7) and (8). However, students enrolled at Gatton or Craft are considered to be enrolled in a high school and a postsecondary institution simultaneously. KRS 164.002(6). The students receive dual credit from both the high school and the postsecondary institution. KRS 164.002(5). KDE requires that the students enrolled at either Gatton or Craft maintain "a primary enrollment at their home high school." See *Infinite Campus at Home High School for Craft Academy & Gatton Academy Students*, p. 4, available at https://education.ky.gov/districts/tech/sis/Documents/Residential_Academy_IC_Setup_Home_School.pdf. This permits the local school districts to receive appropriate funding for the students attending Gatton or Craft. *Id.*

KDE takes the position that because Gatton and Craft offer postsecondary education to its students, they cannot be considered LEAs, and are not programs anticipated by IDEA to guarantee a FAPE. KDE argues that the State meets its obligations under IDEA by offering a FAPE to each eligible student at the student's home school by the local school district. KDE believes that if a student chooses to attend either Gatton or Craft, the student has chosen not to accept a FAPE provided by the local school district, and the local school district has still complied with IDEA by offering a FAPE.

KDE's interpretation is contrary to the intent of IDEA, which aims to provide a FAPE to each child with a disability. Requiring a disabled child to refuse a FAPE to attend either Gatton or Craft does not "guarantee that a FAPE is available to all children with disabilities." Furthermore, such a requirement

could be considered out of compliance with the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973. For instance, with her request, Senator Raque Adams provided an April 22, 2016, "Letter of Findings," in which the United States Department of Education Office of Civil Rights (OCR) determined that a local school district was responsible for providing accommodations to ensure that the student received FAPE in the dual-credit courses taken through a local college. OCR found that by referring the student to the college for any educational needs as a result of a disability, the local school district was in violation of federal law.

By declaring Craft and Gatton to be high schools, the General Assembly has indicated that Gatton and Craft are secondary schools. Furthermore, it is undisputed that Gatton and Craft are schools for students in the eleventh (11th) and twelfth (12th) grades and therefore considered secondary schools under Kentucky law. Simply because these students are taking college level courses in high school and receiving college credit for those courses does not require a finding that Gatton and Craft are not secondary schools for purposes of IDEA. The students at Gatton and Craft receive secondary education towards completion of the 12th grade, and therefore are not receiving education beyond the 12th grade. Again, to interpret IDEA as the KDE suggests would be contrary to its intent and would disregard the Act as a whole. *See Yates v. U.S.*, 135 S.Ct. 1074, 1081-82, 191 L.Ed.2d 64 (2015) (specific language of statute must be interpreted in the broader context of the statute as a whole).

Having said that, it is unclear whether the General Assembly intended for Craft and Gatton to act as their own LEAs to develop a FAPE for each student, to merely implement a FAPE developed by a student's home local school district, or to require the local school districts in which Craft and Gatton operate to develop a FAPE for each student. For example, Senator Raque Adams informs us that KDE assigned Craft Academy the school code 610300, indicating that KDE considers Craft to be its own LEA. *See Standard File Layout, Assessments*, p 1, available at https://education.ky.gov/districts/tech/Documents/Standard_File_Layout.pdf. Yet, KDE assigned Gatton the school code 571001, indicating that KDE considers Gatton to be a school within the Warren County LEA. Recognizing that KDE has the discretion to make this determination, we also recognize that the responsibility ultimately falls to KDE to make sure a FAPE is avail-

able to all disable children in the state, even the students attending Craft or Gatton.

KDE informs us that currently a FAPE is offered to each student by his home school district. That being the present situation, we advise that to comply with IDEA and Kentucky law, at minimum the FAPE offered to students by their home school district must be implemented at Gatton or Craft.

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ATTORNEY GENERAL

A handwritten signature in cursive script, appearing to read "Taylor Payne".

Taylor Payne
Assistant Attorney General

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